

REMARKS

Claims 1, 2, 4-7 and 14-18 are currently pending in the application, as amended.

Claim 1 has been amended to point out that a first stick-like article of each unit package is positioned adjacent the front wall of a square-tubular case and a second stick-like article is positioned adjacent a rear wall of the square-tubular case and unit packages that are comprised of a plurality of stick-like articles are extracted from an extracting outlet of the square-tubular case one at a time. Support for this amendment can be found in specification paragraph numbers 14, 30 and 42 and in Figs. 1-3, 8 and 12.

Claim 16 was amended to point out that a first battery of each unit package is positioned proximate a front wall of a square-tubular case and a second battery of each unit package is positioned proximate a rear wall of the square-tubular case and the batteries are assembled in parallel in the unit packages with each battery having a diameter. Claim 16 was also amended to point out that an extracting outlet extends from a first end adjacent the front wall of the square-tubular case to a second end adjacent the rear wall of the square-tubular case and a height of the extracting outlet from the first end to the second end is less than twice the diameter of the batteries such that the unit package that is in facing engagement with the top surface of the bottom of the square-tubular case is taken out of the extracting outlet from one end of the batteries in the unit package. Support for these amendments can be found in specification paragraph numbers 14, 30, 34, 40, 42 and 77 and in Figs. 1-3, 8 and 12.

Claim 17 was amended to replace the phrase "square-tubular case" with the phrase "tubular case" and to point out that the tubular case houses a plurality of stacked unit packages wherein each of the unit packages is comprised of a plurality of batteries positioned in a side-by-side relationship. Claim 17 was also amended to point out that a first battery in each unit package is positioned adjacent a front wall of the tubular case and a second battery in each unit package is positioned adjacent a rear wall of the square-tubular case. Claim 17 was further amended to point out that a base unit package is in facing engagement with the top surface of the bottom wall of the tubular case and the first battery of the base unit package is positioned proximate the front end of the extracting outlet while the second battery of the base unit package is positioned proximate the rear end of the extracting outlet. Support for these amendments can

be found in specification paragraph numbers 12, 14, 29, 30, 40, 42 and 77 and in Figs. 1-3, 8 and 12.

Claim 18 was amended to replace the phrase "square-tubular case" with the phrase "tubular case" and to point out that the stick-like articles are stacked in a side-by-side relationship in each unit package and have a first stick-like article and a second-stick-like article positioned at either end of the unit packages. Claim 18 was also amended to cancel the phrase "at the front and rear walls" and to point out that a unit package that is placed on the top surface of the bottom of the tubular case is extracted from the extracting outlet by grasping the unit package adjacent the first and second stick-like articles wherein the first stick-like article is positioned adjacent a front wall of the tubular case and the second stick-like article is positioned adjacent a rear wall of the tubular case. Support for these amendments can be found in paragraph numbers 14, 30, 34, 40, 42 and 77 of the specification and in Figs. 1-3, 8 and 12.

No new matter has been added to the applications by the above-described amendments to claims 1 and 16-18.

The above-described amendments were made as a result of a telephone interview with the Examiner in charge of the above-identified application conducted on September 20, 2004. Although agreement was not reached with respect to the claims, the Examiner indicated that claims amended to relate the size of an extracting slot or the case to the size of articles or unit packages contained within the case would likely be given favorable consideration at least based upon the prior art currently of record in the application. Accordingly, Applicants have amended each of the independent claims to relate the size and positioning of the articles to the size of the extracting outlet or the case. The undersigned would like to thank the Examiner for the courtesies extended during the interview.

Claim Rejections – 35 U.S.C. § 103

The Examiner rejected claims 1, 2, 4, 16 and 18 under 35 U.S.C. § 103(a) as been unpatentable over U.S. Patent No. 1,272,411 (Fitz Gerald) in view of U.S. Patent No. 2,299,027 (Novak) and U.S. Patent No. 4,971,197 (Worley). The Examiner argues that Fitz Gerald discloses each and every element of the above-listed claims but does not disclose a "square" tubular case or unit packages containing a plurality of stick-like articles. The Examiner further argues that Worley teaches that it was known in the art to place a plurality of batteries in a unit

package and Novak teaches that it was known in the art to provide stacked batteries in a square-tubular dispensing case aligned in parallel with the front wall of the case. The Examiner also argues that it would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the case of Fitz Gerald with a square shape in order to accommodate the shape of the product contained upon reviewing Novak and to provide unit packages of batteries in the container of Fitz Gerald as taught by Worley and Novak in order to present the batteries for consumer purchase. Applicants respectfully traverse this rejection.

Referring to Figs. 1-6, Fitz Gerald is directed to a display carton 1 constructed such that articles or packages contained therein may be automatically fed, one article or package at a time, through a discharge outlet 15 (Column 1, lines 16-20). The carton 1 includes front and rear walls, 2, 3 and side walls 4, 5 as well as a false bottom constructed of a slice of cardboard divided into a plurality of flanges 10-13 (Figs. 6). The false bottom is positioned in the carton 1 such that a false bottom flange 10 is inclined with a depending flange 11 extending from a bottom of the carton 1 upwardly along the back wall 3, a front flange 12 extending up the front wall 2 and a lip 13 extending perpendicularly from the front wall 2 to support articles above the lowest section of the false bottom flange 10. Tongues 14 are cut along the side walls 4, 5 behind the discharge outlet 15 and are folded inwardly, generally perpendicular to the side walls 4, 5 to support the inclined false bottom flange 10. When the carton 1 is filled with articles, the individual articles are urged toward the lowest portion of the false bottom flange 10 by the incline of the false bottom and may be removed from the carton 10 by pressing against one end of the article through one side opening 15 and dispensing the single article through the opposite side opening 15. A second article that is positioned upwardly on the false bottom toward the rear wall 3 then slides into place adjacent the side opening 15 when the first article is removed from the side opening 15 and additional articles drop into place on the false bottom between the article immediately adjacent the side opening 15 and the rear wall 3. The cut out created by the flap 14 in the side of the carton 1 is not large enough to dispense articles and is only large enough to permit the flap 14 to be bent perpendicularly to support the false bottom flange 10.

Referring to Figs. 1-3, Novak is directed to a display carton including a pair of compartments A, B separated by a panel C. The compartments A, B have a generally square-tubular shape and are utilized for storing, displaying and dispensing batteries 2. The batteries are individually stacked (Figs. 6-10) in the compartments A, B and are removed from an opening 1

positioned above an upwardly extending edge 30 in a front wall 5 of the compartments A, B. A flap 23 positioned adjacent the edge 30 on the floor of the compartments A, B prevents more than one battery 2 from being dispensed from the opening 1 at one time and blocks a battery 2 positioned behind the battery being dispensed from moving toward the opening 1, thereby allowing an upper battery to move into a dispensing position.

Referring to Figs. 1-4, Worley discloses a package 10 binding a plurality of individual sets 12 of dry cell batteries 14.

Referring to Figs. 1-3, the present invention is directed to a dispensing package 1 comprised of a tubular case that houses stacked unit packages 6. Each package 6 contains a plurality of stick-like articles or batteries 7 aligned in parallel with the front wall 11 of the square-tubular case. The batteries 7 are stacked in a side-by-side relationship in each unit package 6 and each of the batteries 7 has a diameter. An extracting outlet or tear-off portion 5 is provided in a side wall 12, 13 of the square-tubular case and forms an extracting outlet for extracting unit packages 6 from the case. The extracting outlet or tear-off portion 5 is inclined along the side wall 12, 13 so that a front end is lower than a rear end and has a generally constant height between the front and rear ends. A bottom or base 4 of the case is inclined so that a front side of the bottom 4 is lower than a rear side. The extracting outlet or tear-off portion 5 is positioned in the side wall 12, 13 such that the unit package 6 that is to be placed on the top surface of the bottom 4 is taken out of the outlet 5 from one end of the stick-like articles.

Referring specifically to Figs. 1 and 12, the first stick-like article 7 in each of the unit packages 6 stacked in the case 1 is positioned adjacent the front wall 11 and a second stick-like article 7 in each of the unit packages 1 is positioned adjacent a rear wall 2 of the case 1. The unit package 6 positioned on the bottom of the tubular case 1 is extracted from the extracting outlet 5 by grasping the first and second stick-like articles 7 in the bottom unit package 6 and pulling the unit package 6 through the extracting outlet 5. The diameter of the batteries 7 and the height of the extracting outlet 5 generally prevents more than one unit package 6 from being extracted at one time. The bottom unit package 6 also generally encompasses the entire area proximate the extracting outlet 5, therefore, the unit packages 6 are removed from the extracting outlet 5 one at a time. In addition, the pitch of the unit packages 6 when stacked in the case 2 and alignment of the stick-like articles 7 in the unit packages 6 permit relatively easy removal of the lowermost unit package 6 because the upper unit packages 6 are aligned in parallel with the lower unit

packages 6 and their stick-like articles 7. The height of the extracting outlet 5 is less than twice the diameter of the stick-like articles or batteries 7.

Amended claim 1 is directed to a dispensing package and recites, *inter alia*:

a square-tubular case housing stacked unit packages, each package containing a plurality of stick-like articles aligned in parallel with the front wall of the square-tubular case, a first stick-like article of each unit package being positioned adjacent the front wall and a second stick-like article being positioned adjacent a rear wall of the square-tubular case;

... an extracting outlet or a tear-off portion for forming an extracting outlet for extracting the unit packages one at a time ... said extracting outlet or tear-off portion is provided on a side wall of said square-tubular case such that the unit package, which is to be placed on the top surface of the bottom, is taken out of the outlet from one end of the stick-like articles in the unit package.

When making a rejection under 35 U.S.C. § 103, the Examiner has the burden of establishing a *prima facie* case of obviousness. The Examiner satisfies this burden only by showing (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine references, (2) a reasonable expectation of success and (3) the prior art references must teach or suggest all of the claim limitations (MPEP 706.02(j)). The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art and not from the Applicant's disclosure (MPEP 706.02(j)). Further, the mere fact that the prior art could be modified in the manner proposed by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification. Ex parte Dussaud, 7 U.S.P.Q.2d 181, 120 (PTO Bd. App. & Int. 1988).

Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness with respect to amended claim 1. Specifically, the combination of Fitz Gerald in view of Novak and Worley would not disclose each and every element of amended claim 1. Specifically, any combination of Fitz Gerald in view of Novak and Worley would not disclose unit packages comprised of a plurality of stick-like articles stacked in a square-tubular case wherein a first stick-like article is positioned adjacent the front wall of the case and a second stick-like article is positioned adjacent the rear wall of the case such that the unit packages are extracted from the case through an extracting outlet or tear-off portion one at a time. Fitz Gerald

teaches the carton with the extracting opening on the front side surface of the carton adjacent the front wall of the carton. Novak teaches dispensing batteries from a front opening one at a time and Worley teaches unit packages of batteries. Any combination of these references would not result in a square-tubular case with a side extracting outlet that permits extraction of one unit package at a time wherein the unit packages are stacked in the case such that a first stick-like article in each unit package is positioned adjacent a front wall of the case and a second stick-like article in each unit package is positioned adjacent a rear wall of the case.

In addition, one having ordinary skill in the art would not modify Fitz Gerald in view of Novak and Worley to construct the dispensing package claimed in amended claim 1 of the present application. Specifically, the extracting opening of Fitz Gerald does not extend the full length of the side wall but is positioned adjacent a front wall of the case for dispensing a single article therefrom, and one having ordinary skill in the art would not modify the opening to extend the full length of the side wall upon reviewing Fitz Gerald, Novak and/or Worley. Specifically, Fitz Gerald and Novak each teach extracting a single article from an opening and, therefore, teach away from extending the extracting outlet the entire length of the side wall of the carton such that a unit package comprised of articles with a first article positioned adjacent the front wall of the case and a second article positioned adjacent the rear wall of the case may be extracted from a side opening extending the entire length of the side wall, one at a time. The combined device of Fitz Gerald, Novak and Worley would at best result in a carton configured as is described in Fitz Gerald with an opening on the side wall adjacent the front wall of the carton with unit packages stacked therein having a first article adjacent the front wall and an article at an opposite end of the unit package positioned between the front and rear walls with another unit package positioned behind the unit package to be extracted. Accordingly, the combined device would not disclose the second article of the unit package that is positioned adjacent the rear wall of the square-tubular case as is claimed in amended claim 1 of the present application.

Further, there is no motivation for one having ordinary skill in the art to modify the display carton of Fitz Gerald based upon the teachings of Novak and/or Worley to include an extracting outlet on a side surface of the carton that permits extraction, one at a time, of unit packages stacked in the carton wherein a first stick-like article of each unit package is positioned adjacent the front wall of the carton and a second stick-like article of the unit package is positioned adjacent a rear wall of the carton. Both Fitz Gerald and Novak teach removal of

individual articles from a side, front corner extracting outlet and a front extracting outlet, respectively, and Worley teaches unit packages of batteries. Therefore, there is no motivation for one having ordinary skill in the art, based upon the teachings of Fitz Gerald, Novak and Worley to position the extracting outlet on the side of the case to permit extraction of unit packages, one at a time, wherein the unit packages each include a first stick-like article adjacent the front wall of the case and a second stick-like article adjacent the rear wall of the case.

Based upon each of the above-listed arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of amended claim 1 based upon unpatentability over the combination of Fitz Gerald, Novak and Worley.

Claims 2 and 4 are dependent upon claim 1. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 2 and 4 based upon unpatentability over Fitz Gerald in view of Novak and Worley for the same reasons addressed above and directed to amended claim 1.

Amended claim 16 is directed to a dispensing package and recites, *inter alia*:

a square-tubular case housing stacked unit packages, each unit package containing a plurality of cylindrical batteries aligned in parallel with the front wall of the square-tubular case, a first battery of each unit package being positioned proximate the front wall and a second battery of each unit package being positioned proximate a rear wall of the square-tubular case, the batteries being assembled in parallel in said unit packages and each battery having a diameter...

an extracting outlet or tear-off portion for extracting one of the unit packages, the extracting outlet or tear-off portion being inclined so that a front end is lower than a rear end, the extracting outlet extending from a first end adjacent the front wall of the square-tubular case to a second end adjacent a rear wall of the square-tubular case . . .

a height of the extracting outlet or tear-off portion from the first end to the second end thereof being less than twice the diameter of the batteries such that the unit package that is in facing engagement with the top surface of the bottom is taken out of the outlet from one end of the batteries in the unit package.

Claim 18 is directed to a dispensing package and recites, *inter alia*:

a tubular case including two opposing side walls and opposing front and rear walls, the case housing stacked unit packages, each package containing a plurality of stick-like articles aligned in parallel with the front wall of the tubular case, the stick-like articles being stacked in a side-by-side relationship in each unit package and having a first stick-like article and a second stick-like article positioned at either end of the unit packages . . .

an extracting outlet or tear-off portion for forming an extracting outlet for extracting one of the unit packages . . . the unit package, which is to be placed on the top surface of the bottom, is removed by pulling one end of the stick-like articles in the unit package through the opening in the side wall by grasping the unit package through the extracting outlet adjacent the first and second stick-like articles, respectively, the first stick-like article being positioned adjacent the front wall of the tubular case and the second stick-like article being positioned adjacent the rear wall of the tubular case.

Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness with respect to amended claims 16 and 18 based upon unpatentability over Fitz Gerald in view of Novak and Worley. Specifically, and similar to the above-listed arguments directed to amended claim 1, any combination of Fitz Gerald, Novak and Worley would not result in a dispensing package having all of the claimed limitations of amended claims 16 and 18, one having ordinary skill in the art would not modify Fitz Gerald to include each of the claimed elements upon reviewing Novak and Worley and there is no motivation for one having ordinary skill in the art to modify the carton of Fitz Gerald to construct the claimed dispensing package. Specifically, any combination of Fitz Gerald, Novak and Worley would not include a first stick-like article or battery of a unit package that is positioned adjacent or proximate the front wall of the carton and a second stick-like article or battery of the unit package that is positioned adjacent or proximate a rear wall of the carton. In addition, the combination would not include an extracting outlet on a side wall of the carton that permits extraction of an above-configured unit package that is positioned on a top surface of the bottom of the case from the extracting outlet one at a time. The combination of Fitz Gerald, Novak and Worley would at best result in an opening or extracting outlet adjacent a front wall of the carton that does not permit extraction of a unit package with a first article adjacent the front wall and a second article adjacent the rear wall from the front opening or extracting outlet. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of amended claims 16 and 18 based upon unpatentability over Fitz Gerald in view of Novak and Worley.

The Examiner rejected claims 5 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak and further in view of U.S. Patent No. 5,460,322 (Carlson). The Examiner argues that the combined device of Fitz Gerald, Worley and Novak discloses each of the elements of claims 5 and 14 except for a suspending piece. The Examiner

further argues that Carlson discloses a dispensing package with a suspending piece and it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dispensing package of Fitz Gerald, Novak and Worley with a suspending piece as taught by Carlson for the obvious reason of hanging the dispensing package from a rod commonly used in retail store displays. Applicants respectfully traverse this rejection.

Claims 5 and 14 are each dependent upon claim 1. Applicants respectfully submit that claims 5 and 14 are patentable over the combination of Fitz Gerald in view of Worley and Novak and further in view of either Carlson for the same reasons presented above with respect to amended claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 5 and 14 based upon unpatentability over Fitz Gerald in view of Novak and Worley and further in view of Carlson.

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak and further in view of U.S. Patent No. 5,836,478 (Weiss). The Examiner argues that the dispensing package of Fitz Gerald, Worley and Novak discloses each and every limitation of claim 6 except for at least a front wall being transparent, which the Examiner argues Weiss discloses. The Examiner further argues that it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the dispensing package of Fitz Gerald, Worley and Novak with transparent walls in order to enable the visual inspection of the contents. The Examiner also rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald in view of Worley and Novak and further in view of U.S. Patent No. 3,927,809 (Klein). The Examiner argues that the dispensing package of Fitz Gerald, Worley and Novak meets all limitations claimed by the Applicant except for a partition and Klein discloses a dispensing package with a partition for separating used and unused components in the same container. The Examiner further argues that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the dispensing package of Fitz Gerald, Worley and Novak with a partition as taught by Klein in order to distinguish between the used and unused batteries while maintaining a single container for disposal and transport. Applicants respectfully traverse these rejections.

Claims 6 and 7 are dependent upon amended claim 1. Applicants respectfully submit that claims 6 and 7 are patentable over the combination of Fitz Gerald in view of Worley and Novak and further in view of either Weiss or Klein for the same reasons presented above with respect to

amended claim 1. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of claims 6 and 7 based upon unpatentability over Fitz Gerald in view of Novak and Worley and further in view of Weiss or Klein.

The Examiner rejected claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Fitz Gerald. The Examiner argues that Fitz Gerald discloses each and every element of claim 17 except for the case of Fitz Gerald is not a square-tubular case. The Examiner further argues that it would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the case of Fitz Gerald with a square shape in order to accommodate the shape of the product contained, which would have been an obvious matter of design choice. Applicants respectfully traverse this rejection.

Amended claim 17 is directed to a dispensing package and recites, *inter alia*:

a tubular case including a bottom and side walls . . .

an extracting outlet or tear-off portion being formed in one of said side walls, said extracting outlet or tear-off portion including a front end, a rear end and a mid-portion between the front and rear ends, . . . the tubular case housing a plurality of stacked unit packages, each of the unit packages comprised of a plurality of batteries positioned in a side-by-side relationship, a first battery in each unit package being positioned adjacent a front wall of said tubular case and a second battery in each unit package being positioned adjacent a rear wall of said tubular case, a base unit package being in facing engagement with the top surface of the bottom wall, the first battery of the base unit package being positioned proximate the front end of the extracting outlet and the second battery of the base unit package being positioned proximate the rear end of the extracting outlet.

Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness of unpatentability of amended claim 17 based upon unpatentability over Fitz Gerald. Specifically, Fitz Gerald does not disclose and one having ordinary skill in the art would not modify Fitz Gerald to include a plurality of stacked unit packages in the case wherein a first battery in each unit package is positioned adjacent a front wall of the case and a second battery in each unit package is positioned adjacent a rear wall of the case. In addition, Fitz Gerald does not disclose and one having ordinary skill in the art would not modify Fitz Gerald to include an extracting outlet on the side wall of the case wherein the first battery of a base unit package is positioned proximate the front end of the extracting outlet and the second battery of the base unit package is positioned proximate the rear end of the extracting outlet. Based upon at

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least the above arguments, Applicants respectfully request that the Examiner reconsider and withdraw any rejection of amended claim 17 based upon unpatentability over Fitz Gerald.

Allowable Subject Matter

The Examiner has indicated that claim 15 is allowed. Applicants thank the Examiner for the indication of allowance of claim 15.

CONCLUSION

In view of the foregoing Amendment and remarks, Applicants respectfully submit that the present application, including claims 1, 2, 4-7 and 14-18, is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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